

# EXHIBIT C

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

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State of Minnesota, by its  
Attorney General, Keith Ellison,

Petitioner,

vs.

TRANSCRIPT OF PROCEEDINGS

CenturyTel Broadband Court File No. 02 CV-17-3488  
Services LLC, d/b/a  
CenturyLink Broadband  
Services, Inc., d/b/a  
CenturyLink, Qwest Corporation,  
d/b/a CenturyLink QC

Respondent.

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Transcript of the proceedings in the motion  
hearing held on the above-entitled matter on April  
10, 2019, before the Honorable Bethany Fountain  
Lindberg, Judge of District Court, in the Anoka  
County Courthouse, Anoka, Minnesota.

APPEARANCES:

James, Canaday, Deputy Attorney General, and Alex  
Baldwin, Assistant Attorney General, appeared for  
and on behalf of the State.

David Aafedt, Esq., Doug Lobel, Esq., and Dana Moss,  
Esq., appeared for and on behalf of CenturyLink.

Court Reporter: Christina De Grande

1 THE COURT: We're going to start the  
2 case found on line 3 of the calendar. State  
3 of Minnesota, by its Attorney General and  
4 CenturyLink, et cetera.

10:37AM 5 The first thing we're going to do is  
6 have everybody note their appearances.  
7 Let's start with the plaintiffs.

8 MR. CANADAY: Good morning, Your Honor,  
9 Deputy Attorney General, James Canaday,  
10 C-a-n-a-d-a-y.

11 THE COURT: Thank you.

12 MR. BALDWIN: Good morning, Your Honor.  
13 Assistant Attorney General, Alex Baldwin.

14 THE COURT: Okay.

10:59AM 15 MR. AAFEDT: Good morning, Your Honor.  
16 David Aafedt of the law firm Winthrop &  
17 Weinstine on behalf of CenturyLink,  
18 defendants. I also have with me co-counsel  
19 from the Cooley Law Firm, Dana Moss out of  
11:13AM 20 the Washington DC office, although  
21 originating from Lakeville, Minnesota; and  
22 Doug Lobel from the Virginia office of  
23 Cooley.

24 THE COURT: I didn't catch that last  
11:19AM 25 name.

1 MR. AAFEDT: Lobel.

2 THE COURT: Okay.

3 MR. AAFEDT: L-o-b-e-l.

4 THE COURT: Yes.

11:23AM 5 MR. LOBEL: Good morning, Your Honor.

6 THE COURT: Good morning. Have a seat.

7 Looks like we have several motions that are  
8 on the table this morning.

9 MR. AAFEDT: If I may, Your Honor, due  
11:32AM 10 to the fact we have five different motions,  
11 we put together a syllabus that might be of  
12 assistance to the Court and the parties to  
13 walk through them in preparation for the  
14 hearing today.

11:43AM 15 THE COURT: Okay.

16 MR. AAFEDT: May I approach, Your  
17 Honor?

18 THE COURT: You may.

19 MR. AAFEDT: Your Honor, as you know,  
12:09AM 20 we have the State's four motions first  
21 followed by the fifth motion which is  
22 CenturyLink's Motion for Enforcement of the  
23 Protective Order. With respect to all of  
24 the motions, there is some confidential  
12:23AM 25 information contained within all of them,

1 especially Number 5, the Motion for  
2 Enforcement of the Protective Order. We  
3 conferred with the AG's office ahead of  
4 time, and we believe that we can avoid  
12:32AM 5 referencing any confidential material during  
6 our arguments, so we do not believe, unless  
7 Your Honor feels otherwise, that we need to  
8 make any special arrangements.

9 I would note for the record, that we do  
12:47AM 10 have folks not subject to the protective  
11 order in this case present in the courtroom,  
12 so if any party does believe there's a need  
13 to reference the confidential material, we'd  
14 ask the courtroom be sealed.

13:01AM 15 THE COURT: Okay. Is that your  
16 agreement?

17 MR. BALDWIN: That's our understanding  
18 as well. We're not intending to reference  
19 any of the particular numbers in enforcement  
13:14AM 20 of the Protective Order.

21 THE COURT: All right. That being  
22 said, let's move to the State's Motion to  
23 Amend the Complaint.

24 MR. BALDWIN: Thank you, Your Honor.  
13:26AM 25 If I might, I would just like to take a

1 couple minutes to briefly describe how we  
2 got here today, what it is that we're  
3 requesting, and how we think we can get this  
4 litigation back on track as quickly as  
13:37AM 5 possible.

6 THE COURT: Okay.

7 MR. BALDWIN: The State of Minnesota  
8 sued CenturyLink in July of 2017 alleging  
9 widespread fraud at the company.  
13:43AM 10 Specifically, the State alleged that  
11 CenturyLink falsely promised low prices and  
12 discounts to consumers that it never  
13 provided.

14 Discovery to date shows that  
13:53AM 15 CenturyLink engaged in deliberate corporate  
16 conduct to defraud tens of thousands of  
17 Minnesota consumers. Specifically, the  
18 company used a very complex systems that  
19 removed discounts that its agents were  
14:05AM 20 promising to customers thereby defrauding  
21 tens of thousands of people.

22 Shortly after the State filed this  
23 lawsuit, the company's board of directors  
24 conducted a six-month audit of millions of  
14:19AM 25 corporate records. That audit, the

1 company's own audit, determined that  
2 CenturyLink did not accurately disclose  
3 prices to consumers. The audit determined  
4 that consumers did not get discounts that  
14:30AM 5 they were promised. And the audit also  
6 determined that CenturyLink did not correct  
7 these problems in a timely fashion.

8 CenturyLink, in this litigation, has  
9 hired an expert to analyze and audit just  
14:43AM 10 one of the company's billing systems. That  
11 expert determined that CenturyLink engaged  
12 in widespread fraud over a period of years  
13 to falsely promise discounts it never  
14 provided.

15 As I mentioned, I'm not going to  
16 reference the specific number of consumers  
17 that CenturyLink's expert determined it was  
18 overbilled, but it's an alarming number.  
19 That expert has also conducted nationwide  
15:03AM 20 analysis and has provided similar figures to  
21 others who are looking at CenturyLink's  
22 illegal business practices.

23 This is an enormous case, and it's of  
24 extreme importance to the State of  
15:14AM 25 Minnesota. It is possibly the largest

1 consumer fraud action we have filed since  
2 the landmark tobacco litigation a quarter of  
3 a century ago. Given the enormous  
4 allegations, what discovery shows to date,  
15:26AM 5 and the obstruction we've been dealing with,  
6 we believe the requests that we're making  
7 today are very modest in light of all this  
8 information.

9 Since the State initiated its  
10 investigation nearly three years ago when  
11 CenturyLink engaged in obstruction of the  
12 State's pre-Complaint investigation, all the  
13 way through CenturyLink's ability to  
14 manufacture a half a year delay in the  
15:48AM 15 consideration of these motions, we have been  
16 dealing with a lot. So I'm going to  
17 identify for you the five priority requests  
18 that the State is making today to get this  
19 litigation to the consideration of the  
16:00AM 20 merits as quickly as possible.

21 With respect to the State's Motion for  
22 Sanctions, we are asking the Court to order  
23 CenturyLink to comply with Judge Meslow's  
24 2018 discovery order and provide to  
16:15AM 25 Minnesota the same information it provided



1 to another state attorney general in 2016  
2 and 2017. Specifically, we are asking  
3 CenturyLink to identify tens of thousands of  
4 additional customers who were offered  
16:27AM 5 discounts they did not receive and to  
6 identify tens of thousands of additional  
7 customers who were promised fixed-rate  
8 pricing but who did not get fixed rates  
9 because CenturyLink increased the price that  
16:41AM 10 was charged.

11 We are asking this Court to enforce  
12 Judge Meslow's discovery order which  
13 required CenturyLink to supplement discovery  
14 responses using the methodology provided to  
16:48AM 15 this other state attorney general in 2016  
16 and 2017. It's stylized as a motion for  
17 discovery sanctions because that's what  
18 Judge O'Fallon asked the State to file.  
19 We're less concerned with the sanctions. We  
16:59AM 20 just want the data. We want the  
21 information.

22 The second priority request that we are  
23 asking for today is with respect to the  
24 State's Motion to Compel and Document  
17:08AM 25 Request 175. We are asking for the full

1 underlying data that CenturyLink provided to  
2 David Hall, the company's expert who  
3 determined that the company engaged in  
4 widespread fraud. We're still missing data  
5 for affected consumers that he identified as  
6 being defrauded, and we don't have a legend  
7 or a key to interpret the data. This is  
8 what we're asking for in Doc Request 175.

9 The third priority request that we're  
10 asking for today is also in the Motion to  
11 Compel, and it's five document requests;  
12 184, 185, 197, 198, and 199 which are  
13 grouped together in the State's Motion to  
14 Compel.

15 These are document requests that  
16 identified tens of thousands of additional  
17 customers who were promised discounts they  
18 didn't receive or gift cards that they  
19 didn't receive. CenturyLink's produced no  
20 documents in response to these requests.  
21 We're asking for them not only because it's  
22 important to identify the defrauded  
23 consumers, but we want to see the  
24 methodologies, the audits, the way in which  
25 CenturyLink conducts this analysis. We

1 believe it's extremely important  
2 information.

3 With respect to the State's Motion to  
4 Amend the Scheduling Order, our fourth  
18:14AM 5 priority request is asking the Court to  
6 permit the State to depose David Hall, the  
7 company's expert, as well as Lisa Bach, an  
8 employee with similar knowledge, and as well  
9 as the possibility of deposing the employees  
18:26AM 10 who conducted the methodologies to answer  
11 the other document requests that we're  
12 seeking for the additional statement  
13 analogies with the additional methodologies.

14 CenturyLink didn't produce data that  
18:40AM 15 David Hall analyzed until the State noticed  
16 this motion until months after discovery  
17 closed. He's a central witness. Although  
18 he's CenturyLink's expert, he'll probably be  
19 the first witness we call at trial. And  
18:49AM 20 just in terms of getting this case  
21 efficiently resolved and conducted through  
22 trial, we need to take his deposition before  
23 we get there.

24 Finally, the fifth priority request  
18:59AM 25 that we're asking for today is the Court to

1 schedule a hearing for a partial summary  
2 judgment motion on CenturyLink's liability.  
3 Preferably, if the Court could schedule that  
4 in late May, we would be ready to go at that  
5 point.

6 The audit they clearly conducted in  
7 which the company concluded engaged in  
8 widespread fraud and the expert report that  
9 CenturyLink had submitted in which they  
10 justify down to the number of consumers who  
11 were defrauded in just one system  
12 unambiguously established that CenturyLink  
13 engaged in a pattern and practice of falsely  
14 promising discounts to customers that it  
15 didn't receive.

16 And we would like to move for partial  
17 summary judgment on the issue of liability.  
18 We believe that this would be the most  
19 efficient way to get this case back on  
20 track. The other four priority requests  
21 we're asking for all go to quantifying the  
22 scope of CenturyLink's fraud. We believe  
23 the State could finish that discovery,  
24 analyze the documents, take the limited  
25 depositions, after the Court takes the

1 State's Motion for Partial Summary Judgment  
2 under consideration.

3 Seven months ago when we asked for  
4 additional discovery, we asked for three to  
50:01AM 5 six months of discovery, so it's a long way  
6 from where we were months ago when we were  
7 trying to get these issues heard. So we  
8 believe a quick summary judgment motion on  
9 the issue of liability running parallel with  
50:13AM 10 the State's additional discovery is the  
11 quickest way to get this case back on track.

12 Extremely important to us in this case,  
13 move quickly and efficiently to  
14 consideration on the merits. CenturyLink's  
50:23AM 15 liability is uncontested. The only question  
16 is the actual number of consumers they  
17 defrauded and the different ways they did  
18 it.

19 Now, as the Court is well aware, we  
50:34AM 20 filed four motions. We have a number of  
21 documents that we're seeking in the other  
22 items, with the other motions. With the  
23 Court's permission, I would like to go a  
24 little more in detail into what we're asking  
50:45AM 25 for, but I'll pause at this point if the

1 Court has any questions on what I said so  
2 far.

3 THE COURT: Nope. I read your  
4 documents. I'm tracking your arguments. You  
50:50AM 5 can continue. We have until about  
6 11 o'clock.

7 MR. BALDWIN: Thank you, Your Honor.  
8 With respect to the State's Motion for  
9 Sanctions, we believe this is very  
50:59AM 10 straightforward. Judge Meslow ordered  
11 CenturyLink to supplement its responses.  
12 CenturyLink refused to supplement its  
13 responses. At that point, we think there's  
14 really nothing else to consider here.

51:11AM 15 This was an issue that was extensively  
16 briefed. As we highlighted, we filed 16  
17 papers between the two sides on these  
18 discovery motions. It's prehearing motions.  
19 We had post trial -- or post hearing  
51:23AM 20 briefings. It was extensive.

21 We continually asked judge Meslow to  
22 order CenturyLink to simply produce the same  
23 information it already gave to another state  
24 attorney general. That attorney continually  
51:35AM 25 repeatedly refused to do so. After we got

1 word from Judge Meslow requiring the company  
2 to supplement its responses, it refused to  
3 do so last August, two months before the  
4 close of discovery.

51:44AM 5 Rather than meeting and conferring on  
6 the issue, CenturyLink filed an  
7 inappropriate letter with Judge O'Fallon  
8 asking to be relieved from the order. In  
9 our only appearance before Judge O'Fallon,  
10 we had a brief telephone conference in which  
11 he made very clear CenturyLink's letter was  
12 inappropriate, and he wanted to see the  
13 State brief the issue formally on a  
14 discovery motion for sanctions.

52:04AM 15 That's why we filed it and stylized it  
16 as a Motion for Sanctions. But like I said,  
17 we're just interested in the data. It's  
18 incredibly important data. This company  
19 knows they operated a system for years in  
52:16AM 20 which its agents promised discounts and  
21 these discounts never ended up on the bills  
22 of these customers.

23 They initially started analyzing the  
24 problem back in 2016 with another State  
52:27AM 25 attorney general investigating the company.

1 They have tried to answer this, tried to  
2 analyze the problems in numerous ways. All  
3 we're asking for is that we get the same  
4 information they gave to another state  
5 attorney general.

6 It is unambiguously the case that the  
7 company was ordered to supplement its  
8 responses and it refused to do so. We think  
9 there's really little else that needs to be  
10 argued on the issue other than knowing the  
11 extensively-briefed history. We repeatedly  
12 asked for the same information, and Judge  
13 Meslow used the language in his order that  
14 the State was requesting.

15 With respect to the Motion to Compel,  
16 the Court should be aware that this is a  
17 part of CenturyLink's longstanding pattern  
18 and practice to refuse to provide documents  
19 to the State of Minnesota. In our,  
20 pre-Complaint discovery, we, for example,  
21 asked for audio recordings. CenturyLink  
22 gave us 391 audio recordings and said this  
23 was all there was, nothing else to produce.  
24 We subpoenaed third parties, got 91,327 call  
25 recordings.



1 After we filed this case, we had to  
2 file a Motion to Compel in 2018 and  
3 prevailed getting the company to turn over  
4 information about its computer systems,  
5 policies and procedures related to those  
6 systems, employees' training materials, and  
7 the number of consumers it defrauded. It  
8 complied with the first part of that order,  
9 but it didn't give us the information on the  
10 consumers it defrauded.

11 The State has invested significant  
12 resources in taking depositions of  
13 CenturyLink employees across the country,  
14 while they could uniformly say, here are the  
15 documents I would look at. Here's how I did  
16 it. I get this report every week in an  
17 e-mail. I get this spreadsheet every month  
18 telling us the information that they use to  
19 track the company's business operations.

20 We would serve discovery requests after  
21 those depositions and 30 days later be told  
22 the information wasn't responsive. We don't  
23 have it. We're not going to get it after  
24 hearing from the company employees. It's a  
25 pattern and practice, and we think it needs

1 to end at this point.

2 Again, I've already highlighted to you  
3 the information in Document Request 175 that  
4 we're asking for that information that its  
5 expert reviewed as well as the additional  
6 doc requests that go to tens of thousands of  
7 customers the company defrauded. I'll note  
8 in Document Request 117 and 119, we asked  
9 for QA data or quality assurance data that,  
10 again, the employees say regularly is  
11 compiled. We've indicting that we are now  
12 modifying our request to the specific number  
13 of call evaluations that CenturyLink has  
14 conducted for Minnesota consumers and that  
15 particular number is redacted, so I'm not  
16 going to say it.

17 We're also asking through Document  
18 Request 173 for information about  
19 CenturyLink's faulty technology systems.  
20 Remember, the company's own audits,  
21 systematic audits of 9 1/2 million documents  
22 and 32 billion customer records, determined  
23 that the company systems were incapable of  
24 giving accurate price quotes to consumers.  
25 We want information about these IT systems,

1 how they haven't, you know, invested in them  
2 properly and what they do when they look at  
3 considering changing the IT systems.

4 Through Document Request 178, we're  
5 asking for information about the ways in  
6 which CenturyLink tries to reduce the  
7 credits that it talk -- that it provides to  
8 defrauded consumers. There's some  
9 information there about the effort the  
10 company undertakes. Again, a number of  
11 these materials have been marked  
12 confidential, so I want to be careful what  
13 I'm saying, but it's improper efforts to  
14 deny its accounts or credits to people who  
15 have been overbilled.

16 Again, all this information goes to  
17 quantifying the scope of CenturyLink's  
18 fraud. We have the information necessary to  
19 establish CenturyLink's liability and want  
20 to quickly put that issue before the Court  
21 in late May, if possible. All the documents  
22 that we're requesting here go to the issue  
23 of quantifying the scope and nature of  
24 CenturyLink's fraud.

25 Again, this is a company that tracks

1 everything. They memorialized everything.  
2 They document everything. They sat through  
3 numerous depositions to hear how all this  
4 information -- it's regularly compiled.  
5 It's all there. We're just asking for this  
6 information so we can prove our full damages  
7 at trial.

8 In the Motion to Amend to the  
9 Complaint, the State moved to amend its  
10 Complaint for three reasons: One, to ask  
11 undisputed facts admissions from executives  
12 about the scope and scale of CenturyLink's  
13 fraud. For example, in paragraph 25 of the  
14 State's Proposed Amended Complaint, we've  
15 got quotes from the company's current CEO,  
16 the current president of their consumer  
17 operations, and the president of sales at  
18 the time we filed this lawsuit talking about  
19 how its prices are complex, confusing, not  
20 customer-friendly. It's just routine  
21 damaging information that its executives  
22 have acknowledged.

23 In paragraph 26, we've got more  
24 information about the company's audit which  
25 determined, again, that the company was not

1 honestly disclosing its prices.

2 Paragraph 30, we've got quotes from the  
3 current CEO stating that CenturyLink placed  
4 bottlenecks and hurdles in the way of its  
5 agents, that CenturyLink made it "too hard"  
6 for agents to do the right thing. These are  
7 just admissions from the company's own CEO  
8 that we would like to add in.

9 In fact, in paragraph 33, information  
10 about how CenturyLink only stopped using one  
11 of the these systems in response to an  
12 investigation by another state attorney  
13 general and how a week after the State filed  
14 this lawsuit, CenturyLink abandoned another  
15 system that it was using to defraud  
16 consumers.

17 We've got a quote in there from  
18 CenturyLink's president, consumer  
19 operations, in which he admits CenturyLink  
20 made it very difficult for a rep to be able  
21 to quote accurate prices to customers. In  
22 paragraph 40, we add some information about  
23 the specific number of violations that the  
24 documents CenturyLink has produced show so  
25 far. Again, I'm not going to say that large

1 number.

2 The second reason we would just amend  
3 the Complaint was to clarify the State's  
4 allegations and the State's cause of action  
58:09AM 5 related to the company's fraudulent internet  
6 cost recovery fee. This is just one of  
7 those sham fees that they add to everybody's  
8 bill who's got internet service. It doesn't  
9 give you anything of value. It's about \$50  
58:20AM 10 a year. We alleged they, you know, were  
11 defrauding people through this fee.

12 We've also got documents produced since  
13 the State filed this lawsuit that show  
14 CenturyLink raised the prices and fees on  
58:32AM 15 consumers who were promised fixed-rate  
16 pricing or price locks as they're called at  
17 CenturyLink. So it's really just a backdoor  
18 sham way to increase the rates for people  
19 who have been promised fixed-rate pricing.  
58:43AM 20 It provides nothing of value. It's just  
21 another way that CenturyLink didn't live up  
22 to its promises, and we want to add this  
23 information and can clarify what it is  
24 specifically we're alleging.

58:52AM 25 Finally, the third reason we moved to

1 amend the Complaint was out of an extreme  
2 abundance of caution in response to the  
3 Globe litigation that came out about a year  
4 after we filed this lawsuit as well as the  
59:06AM 5 information in Judge Meslow's order, which  
6 there's a sentence in there about the  
7 State's claim for restitution. And, again,  
8 in the context of CenturyLink arguing this  
9 motion to Judge Meslow, they were stating  
59:17AM 10 they were intending to bring a motion to  
11 strike the State's claims for restitution.

12 You know, we have no doubt that we've  
13 pleaded it correctly, that we have a  
14 well-stated Complaint on that issue. But  
59:28AM 15 given where we were, given what was  
16 happening last summer near the close of  
17 discovery, we move to amend the Complaint to  
18 just clarify some of those allegations.

19 With respect to the State's Motion to  
59:39AM 20 Amend the Scheduling Order, again, we're  
21 just asking for additional limited time to  
22 process information that CenturyLink's  
23 unreasonably withholding. I'll just note,  
24 you know, it was just seven months ago that  
59:50AM 25 we were asking for three to six months of

1 additional discovery. Had we had this issue  
2 decided at the time, we would already be  
3 past this point. Even under the most  
4 discovery we were asking for, we would be  
5 moving to the merits.

6 CenturyLink, as we've documented,  
7 engaged in a long -- a way to delay the  
8 Court's consideration of these motions for  
9 half a year. So we recognize what we asked  
10 for may look a little bit different today.

11 We believe, at a minimum, we should be  
12 afforded the time to depose Dave Hall, Lisa  
13 Bach, and the individuals who compiled all  
14 the methodologies about the way in which  
15 Century Link's defrauded people. Again,  
16 these are from documents CenturyLink is  
17 withholding from us so we can't identify the  
18 employees until we get them.

19 Kind of the way discovery proceeded in  
20 this case, you know, CenturyLink has 55,000  
21 employees. They submitted disclosures with  
22 just a few employees. We discovered  
23 deposing them that the real people we were  
24 after were not on the initial disclosures.  
25 We had their identity hidden from us. We



1 had to identify them through subsequent  
2 disclosure, some sort of a period of  
3 identifying who it was that really had the  
4 information we were after. So this was sort  
5 of a dynamic process and, again, we think we  
6 should be afforded the time to depose people  
7 who are revealed as having important  
8 knowledge from these documents.

9 We've also highlighted people we tried  
10 to depose and CenturyLink didn't make  
11 available. Again, we don't want to belabor  
12 the issue of the fight here, but we  
13 mentioned we had to notice or request these  
14 depositions 112 times for just 23 people.  
15 We had to request or notice the deposition  
16 of the director of pricing 16 times.  
17 There's several other people over a period  
18 of months that we were requesting their  
19 depositions. CenturyLink didn't make  
20 themselves available. There was all kinds  
21 of obstruction for this information.

22 So we're just looking to tie off loose  
23 ends and get ready for the merits. Again,  
24 discovery unambiguously shows that  
25 CenturyLink engaged in a pattern and

1 practice of falsely promising discounts.  
2 The company's own audit shows it. The  
3 documents they produce shows it. Their  
4 expert report shows it.

01:53AM 5 We're ready to move for partial summary  
6 judgment on issue of liability. But what we  
7 really want to get out of here today is  
8 documents that go to the scope and scale of  
9 CenturyLink's fraud.

02:04AM 10 I'm happy to take any questions that  
11 the Court has at this point. I sort of  
12 highlighted to you where we think these  
13 motions stand and what we believe is most  
14 important. If the Court doesn't have any  
02:15AM 15 additional questions, I would just like to  
16 reserve a little time to respond to opposing  
17 counsel's arguments.

18 THE COURT: And when you're talking  
19 about amending the Scheduling Order to  
02:26AM 20 conduct the additional limited discovery,  
21 what's the timeline you're looking at?

22 MR. BALDWIN: Yes. So when we noticed  
23 this motion seven months ago, we were asking  
24 for three to six months of additional  
02:38AM 25 discovery. We think that would be enough to

1 conduct what we've highlighted.

2 To the extent that the Court shares our  
3 concerns in trying to get this case as  
4 quickly to the merits as possible, we've  
12:50AM 5 identified to you the limited discovery that  
6 we think we absolutely need to take. If the  
7 Court is willing to grant three to  
8 six months and let that run parallel, for  
9 example, for a consideration in the State's  
13:01AM 10 Motion for Partial Summary judgment, we  
11 would have a lot of additional discovery  
12 that we would like to serve based on tying  
13 off loose ends on all kinds of document  
14 requests CenturyLink hasn't followed up on  
13:13AM 15 that aren't even at issue in this motion  
16 because we're trying to highlight for you  
17 the most important information.

18 THE COURT: All right. Who is arguing  
19 the response?

13:22AM 20 MR. LOBEL: I am, Your Honor. Douglas  
21 Lobel on behalf of the CenturyLink entities.

22 THE COURT: Okay. Go ahead.

23 MR. LOBEL: Your Honor, I'd like to be  
24 a little bit more disciplined in terms of  
13:29AM 25 going through the motions as they were

1 filed, and we are, as a side, dividing up  
2 the motions. I will handle the Motion to  
3 Amend the Complaint, the Motion to Amend the  
4 Scheduling Order, the Motion for Sanctions,  
03:42AM 5 and also, I will discuss with you at length  
6 this late-made request for immediate summary  
7 judgment motion which is alarming in terms  
8 of the case management problems it would  
9 present, and I'll cover that.

03:56AM 10 Ms. Moss will Cover the Motion to  
11 Compel Discovery and Motion to Enforce the  
12 Protective Order. The reason I suggest  
13 doing that, Your Honor, is there are legal  
14 standards here that are applicable to these  
04:08AM 15 motions that I didn't hear my colleague, the  
16 AG's office, even mention or reference as if  
17 those standards don't apply. But they very  
18 much do apply to what they are asking.

19 Before I get to the specific Motion to  
04:19AM 20 Amend the Complaint, which is -- Mr. Baldwin  
21 just said he wanted the Complaint to tie up  
22 some loose ends. They want 66 individuals  
23 that would need to be deposed. It's hardly  
24 tying up loose ends. There's a lot to be  
04:37AM 25 said about that.

1 But let me just say that as passionate  
2 and convinced that CenturyLink is  
3 practically an organized crime organization  
4 that I heard from Mr. Baldwin, believe me,  
04:53AM 5 Your Honor, we are equally passionate that  
6 this is an unfair and abusive proceeding  
7 that has gone on far too long, that is  
8 taking advantage of virtually unlimited  
9 resources and that, apparently, will never  
10 come to an end.

11 And so there are two sides to this.  
12 And when you're not tethered to the facts,  
13 and my colleague doesn't seem to be, it's  
14 easy to say things and make things look  
05:16AM 15 nefarious and make things look bad.

16 I don't think I'll be able to respond  
17 to each and every fact that was thrown out  
18 in the last 20 minutes or so. Ms. Moss will  
19 certainly do that, but believe me when I  
05:29AM 20 tell you, there's another side of the story.  
21 I'm going to try to give you that other side  
22 that relates to the specific requests they  
23 are making, and I'll try to clarify the  
24 misstatements where I can. They were  
05:39AM 25 rampant in the presentation. But let me

1 proceed to the Motion to Amend the  
2 Complaint.

3 This is an extraordinary request after  
4 the discovery has closed at the end of  
05:51AM 5 almost two years of litigation and one year  
6 of investigation by the State tacked on to  
7 that two years. I think it's really  
8 important to know that they had unfettered  
9 discovery opportunities with the CID  
06:08AM 10 process, pre-filing, in which they obtained  
11 23,000 or so documents from CenturyLink and  
12 had every opportunity to depose whomever  
13 they chose to and chose not to depose  
14 anyone.

06:21AM 15 And here we are three years later where  
16 they're asking for more and more and more  
17 depositions and more discovery having  
18 squandered the opportunities for the last  
19 almost three years. And I'll give specifics  
06:34AM 20 on that. The State bears a huge burden to  
21 justify adding these new facts and these new  
22 allegations after discovery closed.

23 Now, I will tell you something that's a  
24 stark statement, Your Honor. Every material  
06:48AM 25 fact they seek to add into this very large

1 Amended Complaint, the redline version you  
2 have, every material fact was in their  
3 possession by February of 2018. Discovery  
4 closed in September of 2018. They sat on  
5 their hands. They were not diligent. They  
6 failed to proceed. They failed to pursue  
7 the deposition of Mr. Hall who was deposed  
8 in that month. They failed to proceed to  
9 the depositions of all of these other  
10 people, having started discovery, by the  
11 way, four months after it commenced. They  
12 basically did nothing for the first four  
13 months. They were in possession of all this  
14 information. They did nothing, and now  
15 they're coming to Your Honor with an  
16 extraordinary demand for relief.

17 I want to focus the Court on the  
18 applicable standard. I didn't hear a word  
19 about legal standards in the other  
20 discussion. They say it's a permissive  
21 standard for amendment and that the  
22 threshold is low, and I think we all  
23 understand that early in a case, that's  
24 true. When you're at the end of the case,  
25 basically the end of discovery, discovery is

1 closed, when you are seeking to add this  
2 level of facts and allegations, you have an  
3 enormous burden.

4 You cited the *Ray versus Dronen* case.

08:06AM 5 Your Honor recognized this is a *Rute versus*  
6 *American Family* decision in which you  
7 allowed an amendment but said it didn't  
8 cause any prejudice because there were not  
9 facts and allegations that were -- that were  
10 added in. The prejudice is enormous with  
11 this particular proposed amendment. And, in  
12 fact, we cited a case that said simply  
13 moving to amend after discovery closes is,  
14 alone, a basis to deny the motion, that  
15 alone.

16 Now, you didn't hear Mr. Baldwin say  
17 one word about why they did not move before  
18 discovery closed. You didn't hear him say  
19 one word about why they failed to take  
20 Mr. Hall's deposition between February when  
21 they learned his analysis and September when  
22 it closed. You didn't hear him try to  
23 justify any of their lack of diligence  
24 because they don't have a justification.

08:58AM 25 The best defense is a good offense,



1 Your Honor, and that's what you're seeing  
2 here. They cannot defend their lack of case  
3 management, their lack of diligence. So  
4 what they do is just throw out unsupported  
09:12AM 5 allegations about things in such a  
6 scattershot way that it sounds good.

7 For example, Your Honor, I heard  
8 Mr. Baldwin say liability is uncontested.  
9 Your Honor, I don't think you actually think  
09:25AM 10 liability is uncontested in this case. I  
11 can assure you liability is sharply  
12 contested with virtually everything. So  
13 those are the kinds of statements that they  
14 throw out to sound facially good to try to  
09:36AM 15 convince the Court to give them more, more,  
16 more.

17 With the Court's permission, I would  
18 like to walk you through the timeline of  
19 what we all went through because the  
09:47AM 20 timeline is very telling here in terms of  
21 their lack of diligence and the prejudice we  
22 would sustain. Would the Court allow me to  
23 do that?

24 THE COURT: Sure. Go ahead.

09:58AM 25 MR. LOBEL: Thank you, Your Honor.

1 Your Honor, I've handed you the  
2 timeline of key events that we've put  
3 together. It does apply to both the Motion  
4 to Amend the Complaint and the Motion to  
10:31AM 5 Extend the Scheduling Order. It's very  
6 telling. I think you'll see it tells a  
7 story as I walk you through it.

8 So the first entry, Your Honor,  
9 November 17th, 2015, this was the first date  
10:45AM 10 that we could tell the State drafted one of  
11 66 customer affidavits for the individuals  
12 they are trying to now amend the Complaint  
13 and bring into the case.

14 That was the beginning of a one or  
10:56AM 15 two-year process where they drafted these  
16 affidavits and generated them and had them  
17 sitting in their files. This was not only  
18 before the case started. This is before the  
19 CID process started. That's how early they  
11:12AM 20 were knowledgeable of these people who they  
21 have not attempted to bring in the case  
22 until just recently.

23 In May or July, you see the second  
24 entry. The State issued these two CIDs, and  
11:24AM 25 they had -- the CID process went on for

1 14 months. As I mentioned earlier, 23,000  
2 pages of documents generated by CenturyLink  
3 produced to them but no depositions taken by  
4 the State even though they could have taken  
11:40AM 5 hundreds if they chose to.

6 In July of 2017, they filed a  
7 Complaint. They identify what they call 35  
8 exemplary customers. Now, the individual  
9 from November 2015 was not one of those 35.  
11:55AM 10 They kept that in the vault apparently  
11 awaiting some opportunity to add it later.

12 On October 5th, 2017, after some  
13 back-and-forth negotiations with the State,  
14 we submitted a proposed discovery plan. The  
12:10AM 15 State, which is now seeking upwards of 16,  
16 17 months of discovery, at that time, said  
17 they wanted less than eight months of fact  
18 discovery. They propose a June 1st fact  
19 discovery cutoff.

12:24AM 20 Now, it turns out that Judge Meslow  
21 actually entered an order, as you see, on  
22 November 16th in which he only provided a  
23 six-month discovery period. But the State,  
24 at that time, was more than happy with less  
12:38AM 25 than eight months of discovery.

1 Now, during that six-month discovery  
2 period, just for some context, we produced  
3 over 63,000 pages of documents. There were  
4 23 depositions taken of CenturyLink  
12:53AM 5 individuals in, I believe, 12 or so cities  
6 across the country. There were 100 hours of  
7 deposition testimony, and there were 273  
8 deposition exhibits during that deposition  
9 period. We went out of our way to try to  
13:11AM 10 facilitate this process. We asked the  
11 gentlemen at the AG's office if we could fly  
12 people from to the company to central sites  
13 of Denver and Monroe, Louisiana where we  
14 would set up a base where they can depose  
13:26AM 15 these people. They rejected that.

16 Then we prepared a schedule of people  
17 that they requested. They rejected that.  
18 Then we said we could produce this person on  
19 this date. But they said, no, we want this  
20 other person on this date. And we went back  
21 to the first person, their schedule was  
22 booked. They were out of the country or  
23 whatever.

24 These are the kinds of problems that  
13:45AM 25 occurred. We worked very hard with them to

1 try to accommodate an increasing number of  
2 requests and sort of had the door slammed in  
3 our face in most instances.

4 Continuing on the timeline, Your Honor,  
13:59AM 5 on November 20th, we served our first  
6 written discovery on the State. That was  
7 four days after the initial discovery,  
8 initial Scheduling Order. We knew that with  
9 a six-month discovery period, we needed to  
14:14AM 10 get to it. We prepared the discovery in  
11 advance, and four days after the Scheduling  
12 Order came out, we commenced written  
13 discovery.

14 Now, you'll see that the State waited a  
14:25AM 15 month to serve their first written discovery  
16 on CenturyLink. That was December 13th and  
17 21st. We waited four days. During that  
18 interim period, before the State served  
19 their first written discovery, we talked to  
14:39AM 20 them about we thought that the six months  
21 was awfully aggressive, and we were  
22 concerned about the time period.

23 We went to Mr. Canaday and Mr. Baldwin  
24 and we said we would like you to agree to an  
25 extension of discovery. They refused. They

1 said no. We think the six months is  
2 adequate. We don't think we need any more  
3 discovery than that. They would not agree  
4 to go jointly to the Court and seek a  
15:02AM 5 discovery extension. Many, many discussions  
6 and we had the door slammed in our face.

7 So we moved quickly after the new year  
8 as we took our first customer deposition on  
9 January 9, 2018. That was seven weeks after  
15:18AM 10 discovery opened and after we had gotten the  
11 results of written discovery back. And  
12 you'll see, Your Honor, if you look down,  
13 because it's quite a number of rows beyond  
14 that, the State did not request their first  
15:35AM 15 deposition until three-and-a-half months  
16 after written discovery -- after discovery  
17 opened.

18 And so during this time, we were  
19 talking many, many customer depositions. We  
15:45AM 20 were hearing consistently from these  
21 customers we don't think we're entitled to  
22 restitution. The affidavit that the State  
23 prepared is not accurate. The Complaint is  
24 not accurate. And we had -- the totals are  
15:58AM 25 21 of 33 people deposed said they did not

1 believe they were entitled to restitution,  
2 that they were not owed any money by  
3 CenturyLink.

4 Now, the State will tell you that's  
16:08AM 5 because we gave credits after the State  
6 began investigating. That's false. These  
7 credits and adjustments that were given at  
8 times because there were misunderstandings  
9 within the account or -- or for whatever  
16:20AM 10 reason. And many of these were provided  
11 long before the State ever darkened our  
12 door. So that's not a true statement.

13 So Your Honor, this is a critical date.  
14 On February 23rd, 2018, and I mentioned this  
16:36AM 15 several times, we provided the State with  
16 its closer data. That's the issue for their  
17 Motion for Sanctions. And we identified a  
18 forensic consultant named David Hall in  
19 interrogatory responses. That was the date  
16:50AM 20 after which they had the ability to seek the  
21 data of David Hall through a document  
22 request and to seek his deposition.

23 The first time that we heard that they  
24 wanted David Hall's deposition was after  
25 discovery closed in this case in early

1 September. The first time that we heard  
2 that they wanted David Hall's data was in  
3 July of 2018, meaning that they got a  
4 disclosure about David Hall's analysis and  
5 methodology and for five months did not seek  
6 the underlying data that he relied upon, and  
7 yet, they're coming to you today and asking  
8 for extraordinary relief to extend the  
9 discovery period to give them David Hall's  
10 deposition.

11 And I ask the Court, why didn't they  
12 take it in March or April or May or June or  
13 July or August instead of wanting to take it  
14 in the end of 2019? They did not act  
15 diligently. They did not pursue their  
16 rights, and they're really not entitled to  
17 grace from the Court, in our view.

18 Now, moving on, Your Honor, on  
19 March 1st, we did reach agreement internally  
20 that we thought there needed to be  
21 additional discovery. So the -- the Court  
22 entered an amended scheduling order on  
23 March 1st, extended discovery for three and  
24 a half months. That was the first discovery  
25 extension in this case. They stand here



1 before you seeking a second discovery  
2 extension, which matters. It's not their  
3 first bite at the apple.

4 Now, I mentioned that about that same  
18:26AM 5 date, they made their first request to  
6 schedule depositions. This was  
7 three-and-a-half months after discovery  
8 opened. We had already deposed 16 consumers  
9 by the time the State first wrote us and  
18:39AM 10 said they wanted to depose someone from  
11 CenturyLink. Sixteen consumers, that was  
12 the number of depositions they could have  
13 done if they would have pursued this  
14 respectfully and diligently. And by the  
18:53AM 15 way, they didn't take the first deposition  
16 for another couple weeks after that. So  
17 it's almost over four months' delay.

18 Now, during this whole time period,  
19 Your Honor, they've been drafting and  
19:05AM 20 drafting and drafting consumer affidavits.  
21 And the process ended on March 16, 2018,  
22 from the discovery that we've been provided,  
23 which means that for about two-and-a-half  
24 years, they were working with these  
19:21AM 25 customers drafting affidavits. These 66

1 individual were all identified, for sure, by  
2 March of 2018. And yet, it's not until  
3 December of 2018 did they provide us with an  
4 Amended Complaint in which they now want to  
19:35AM 5 add these 66 individuals to the case.

6 We were doing consumer depositions all  
7 throughout the winter and the spring and  
8 into the summer. And I ask Your Honor, why  
9 did they not include them at the time that  
19:50AM 10 they knew of them so we could have done them  
11 during the open discovery period instead of  
12 now having to amend the Complaint and add  
13 them in with enormous prejudice to us and  
14 enormous cost.

20:03AM 15 So moving on, July 23rd is a critical  
16 date. That's the date Judge Meslow issued  
17 the order on the cross motions to appeal.  
18 And you'll see the State, they got started  
19 the end of March. They took their last  
20:17AM 20 deposition on August 17th.

21 Now, Your Honor, they're clamoring for  
22 36 months of discovery. Ask yourself why  
23 they squandered the last three weeks of  
24 discovery not taking any depositions. They  
20:31AM 25 could have taken, you know, ten depositions

1 in three weeks before discovery ended like  
2 many parties do because we've got a deadline  
3 coming up and we need to get all the  
4 depositions done. They took no depositions  
20:42AM 5 after August 17th. They took depositions  
6 for four months, and they wasted  
7 three-and-a-half months before they ever  
8 start taking them. And then they wasted the  
9 last two weeks at the end of the discovery  
20:54AM 10 period.

11 So discovery closes September 3rd,  
12 2018, and they notice their four pending  
13 motions without briefs. We didn't see the  
14 Amended Complaint or have any of the briefs.  
21:06AM 15 They noticed them on September 25th, 2018.  
16 That's 65 days after Judge Meslow issued his  
17 order July 23rd and three weeks after the  
18 close of discovery.

19 Now, they will tell you that we somehow  
21:21AM 20 delayed because we were negotiating a  
21 hearing date because this is a significant  
22 hearing and there were many obstacles. And  
23 by the way, Your Honor, I'm sure you know  
24 there's a multidistrict litigation ongoing  
21:35AM 25 in New York, obviously involved in

1 expediting discovery in that case. They  
2 noticed the motions. They did not give us  
3 the Amended Complaint or provide any notice  
4 that they intended to add these 66 new  
11:47AM 5 consumers until December 10th of 2018.

6 So, Your Honor, I took a lot of time to  
7 go through this, and I appreciate the  
8 Court's indulgence and patience, but I  
9 thought that it was important because the  
11:59AM 10 timeline does tell a story. I think the  
11 issue for the Court today is should they be  
12 allowed to triple the case, effectively  
13 start over, add pages and pages of new facts  
14 that are enormously prejudicial, cause us to  
12:14AM 15 have to then depose all these 66 new  
16 consumers, all of which they knew about when  
17 they had the opportunity to do this during  
18 the process that the Court set.

19 So with respect to their Amended  
12:30AM 20 Complaint, there are at least four problems  
21 that we've identified. They want to add  
22 these 66 people. As I said, they're too  
23 late. They were not diligent. They knew  
24 about the claims 2015 to 2017. And Your  
12:48AM 25 Honor, and we feel we were a bit sandbagged

1 on this because we know that they had them,  
2 and we wonder why they didn't add them until  
3 after discovery closed.

4 It's highly prejudicial, and they  
5 cannot explain the significant delay. And  
6 the Court does consider the stage of the  
7 proceeding in terms of the legal standard  
8 applicable. It's not liberally granted when  
9 you're sitting where we're sitting today.  
10 It's much more searching, and I think the  
11 Court needs to look at whether they acted  
12 diligently, whether they are entitled to  
13 additional discovery based on the  
14 opportunity that they had.

15 Then, Your Honor, they make the  
16 astounding statement in their reply brief on  
17 the Motion to Amend, well -- because we  
18 pushed back very hard in our opposition and  
19 say, well, these were vignettes or examples.  
20 Honestly, we don't really need them.

21 They're irrelevant to the scope of the case.  
22 We only added them to educate the public.

23 First of all, Your Honor, you should  
24 strike them because they just told you they  
25 probably don't need them. But if they're

1 being candid with the Court and they're  
2 saying they need them to educate the public,  
3 why didn't they add them when they did the  
4 last affidavit in March 2018? If they were  
23:56AM 5 so desperate to educate the public, they  
6 could have educated the public a year ago.  
7 They chose not to because this is all  
8 contextual, Your Honor, is the reason.

9 Now, they ask you to add these facts  
24:07AM 10 and allegations about the closer promotions,  
11 and if Your Honor looks at the redline of  
12 the Amended Complaint, pages and pages and  
13 pages of new facts and new allegations that  
14 they wanted to add. As the timeline shows,  
24:20AM 15 Your Honor, on February 23rd, 2018, they  
16 learned about the closer data and Mr. Hall.

17 So the problem with this is, they're  
18 too late. They didn't act diligently. They  
19 have no excuse why they waited until after  
24:36AM 20 the close of discovery to add this, and it  
21 would be enormously prejudicial for us to  
22 have to be confronted with these new  
23 allegations at this stage of the litigation  
24 and to essentially start over again.

24:46AM 25 The third problem with the Amended

1 Complaint: They add the express statement  
2 that they're pursuing claims for tens of  
3 thousands of Minnesota consumers. Your  
4 Honor, I ask you to think about that a bit  
24:58AM 5 in terms of due process problems there. We  
6 have no notice of these individuals.  
7 Clearly, Your Honor is not trying a case  
8 involving tens of thousands of Minnesota  
9 consumers. This is an unnecessary but  
25:12AM 10 highly prejudicial allegation. The State --  
11 and inconsistent with their position.  
12 They've claimed that the case always  
13 involved that many consumers, and although  
14 we disagree, if that's how they feel, they  
25:24AM 15 don't need to add this in.

16 The fourth thing that they do in the  
17 Amended Complaint is they add on all these  
18 quotes that you heard from people at the  
19 company. Now, Your Honor, what I didn't  
25:34AM 20 hear is they were tied in with Minnesota  
21 consumers. These were generic quotes from  
22 business people taken out of context not  
23 tied to individuals that are at issue in  
24 this case. We don't even know if this  
25:46AM 25 affects Minnesota consumers because that's

1 not part of the story here. But the problem  
2 with all these new facts, new quotes for  
3 documents and testimony is it's too generic.  
4 It's not tied to any consumer. It's too  
25:58AM 5 late. They wanted -- they learned about  
6 this stuff months and months ago. They  
7 didn't move to amend. There's the need for  
8 additional discovery potentially, and it  
9 doesn't change the scope of the case.

26:10AM 10 So why did they need to add all these  
11 additional? It's not a feel-good situation,  
12 Your Honor. They've got a notice pleading  
13 standard. They don't need to amend it every  
14 time they get a new document.

15 And I guess the fifth thing I just  
16 heard today for first time is that one of  
17 the of the reasons they wanted to amend is  
18 to add in the internet cost recovery  
19 allegations. Well, Your Honor, if you look  
26:31AM 20 at the initial Complaint, there's lots about  
21 the internet cost recovery. They didn't add  
22 that in. The Amended Complaint has always  
23 been in this case. So that's -- that's  
24 another misstatement in our view.

26:43AM 25 Now, if you look at the briefing, the



1 only response to all of these points is that  
2 we knew about these facts anyway. There are  
3 facts, and we knew about them. Well,  
4 knowing about them and meeting a  
5 significantly revised Amended Complaint are  
6 two very, very different things, and they  
7 don't really have any justification for the  
8 delay. They just want to throw more  
9 bad-sounding allegations at you.

10 They -- at the end, Mr. Baldwin talked  
11 about they want to add facts about the scope  
12 of relief. That's another way of saying  
13 they want to add new customers. Well, they  
14 had the opportunity to add new customers.  
15 It would be extremely prejudicial to add new  
16 customers at this stage. We would have far  
17 more than -- if they -- if the amendment is  
18 allowed and 66 consumers are added -- Your  
19 Honor, I can assure you, we've been through  
20 this process many, many times. It takes  
21 weeks to pull this data and prepare for even  
22 one deposition given where the information  
23 is kept in the company.

24 So we're not talking about three to six  
25 months of discovery. We're talking about

1 much more than that. And by the way,  
2 discovery is not one-sided. They seem to  
3 think it is. We would be entitled to  
4 discovery too.

27:54AM 5 Finally, they say the other reason they  
6 need it to amend is to address Judge  
7 Meslow's order about the Globe case. Well,  
8 Your Honor, first of all, that's a complete  
9 red herring. Judge Meslow never talks about  
10 the Amended Complaint in his order. He  
11 issued an order involving four instructions.  
12 "You shall amend your interrogatories in the  
13 following four ways," and he lists them. He  
14 never mentioned the Amended Complaint  
15 because the level of detail he demanded in  
16 order to satisfy the Globe standard is far  
17 beyond what we've ever seen in a complaint.

18 This is another contextual argument by  
19 the State trying to make up for their lack  
20 of diligence, and they say to the Court, oh,  
21 Judge Meslow's issued an order in July, so  
22 clearly, in December, we need to amend our  
23 Complaint to be here. If they really are  
24 sincere about that, why didn't they amend it  
25 two weeks after Judge Meslow issue his

1 order? And if they're sincere about that,  
2 why are they telling in their reply briefs  
3 that they don't really need to add the  
4 consumers because it's just icing on the  
5 cake? They're not sincere about it. These  
6 are just pretexts.

7 THE COURT: Okay. Concerned about your  
8 timeline here. You've got a half an hour  
9 and you've talked about one of these four  
10 arguments, and we haven't gotten to yours.  
11 So just been aware --

12 MR. LOBEL: Understood, Your Honor.

13 THE COURT: -- of your time. And at  
14 some point, I'm going to cut you off and  
15 good back to the State.

16 MR. LOBEL: Okay. I'm going to jump to  
17 the Motion to Amend the Scheduling Order.  
18 Your Honor, there's -- this motion violates  
19 three rules and one court order, Rule 6.02,  
20 Rule 111.04, and the Scheduling Order all  
21 say that any motion to extend the schedule  
22 must be made before the deadline expires.  
23 They ignore these rules completely, and they  
24 come up with contextual reasons why they  
25 have moved at this time, but they haven't

1 given you any -- any real reason.

2 As I said, they started late. They  
3 ended early. They have no excuse, and they  
4 certainly can't explain -- they can't meet  
5 the standard of excusable neglect for  
6 unusual circumstances which applies at this  
7 particular stage of the proceedings.

8 With respect to the individuals that  
9 they seek to depose, I've covered David  
10 Hall. Let me talk to you, Your Honor, about  
11 Lisa Bach. That was one of the the names  
12 Mr. Baldwin mentioned. We disclosed Lisa  
13 Bach to the State on February 23rd,  
14 14 months ago. They want to depose her as  
15 part of this additional discovery.

16 They have no justification why they  
17 didn't pursue this from February 23rd to  
18 September 3rd, and I think if I had the  
19 time, Your Honor, and we could certainly  
20 supplement our briefing, every one of the  
21 requests they make, we could give you the  
22 date when they learned of this, all of which  
23 was before discovery closed.

24 They -- and I think it needs to be  
25 said, the complaints about our conduct and

1 the way we managed discovery, this is the  
2 first motion they ever made on this. If  
3 this was really an issue, why hadn't they  
4 made an issue before this complaining about  
5 this? They never did.

6 Your Honor, let me move on to the  
7 summary judgment issue. They -- I will say  
8 this request has entirely evolved. About  
9 six weeks ago, Mr. Baldwin wrote me and said  
10 -- with a proposed stipulation to set an  
11 August 7th date for summary judgment  
12 arguments. He wanted us to jointly submit  
13 it to the Court. We thought it was  
14 impractical because it set a date certain,  
15 and, of course, we didn't know the Court's  
16 schedule or when the Court would issue a  
17 ruling or what that ruling would be.

18 The next thing we learn is that in  
19 their moving briefs, they said we don't have  
20 enough information to move for summary  
21 judgment. We'd like to do that when you  
22 compel responses to us. And now we've heard  
23 for the first time in the reply briefs in  
24 his briefing that they want to file partial  
25 summary judgment, and today is the first day

1 we heard that they wanted to do it in May  
2 because they claim that everything's  
3 resolved. We're not contesting liability.  
4 We just need to go to damages and then I  
32:17AM5 guess judgment and whatever else.

6 Your Honor, the notion of doing partial  
7 summary judgment while we're doing  
8 additional discovery would be a nightmare of  
9 management problems. They misunderstand the  
32:30AM10 nature of this discovery. That -- the  
11 claims involve a damages element as well as  
12 a quantification element. You have to prove  
13 damages in order to prove liability, and  
14 this is where they go wrong. They say that  
32:45AM15 all the discovery they wanted to do involves  
16 quantum of damages. No. It involves  
17 whether there is damages as well.

18 So what you would have, if you agree to  
19 this proposal, is weekly, if not daily  
33:00AM20 disputes about the nature of the discovery  
21 they're seeking that we claim would be  
22 veering into liability issues and they claim  
23 are just on damages issues. There is an  
24 overlap, and frankly, it doesn't even seem  
33:14AM25 to save any time to go to partial summary

1 judgment and the damages, and the idea of  
2 having this discovery ongoing during the  
3 summary judgment briefing is just completely  
4 impractical.

33:27AM 5 If you look at their brief and the  
6 items they want additional discovery on,  
7 much of it involves liability. They want  
8 David Hall. He involves liability. They  
9 want depositions of employees of  
33:39AM 10 methodologies that CenturyLink used. That's  
11 liability. They want depositions of  
12 employees about systems. That involves  
13 liability. So they're -- they say they want  
14 to do damages discovery. I assure you it's  
33:52AM 15 all liability, and how would we sort that  
16 out?

17 Plus, Your Honor, we may need discovery  
18 if they have issued consumers in their  
19 summary judgment motion that we would need  
34:00AM 20 to depose on liability. So the management  
21 problems are just enormous in that proposal,  
22 and I just think it's completely unworkable  
23 and inefficient, and it doesn't save any  
24 time.

34:13AM 25 Your Honor, the last issue I will

1 address is the Motion for Sanctions. The --  
2 we have had sharp disagreements about the  
3 interpretation of this one sentence of a  
4 15-page order from almost the day that it  
34:25AM 5 came out, and we -- the issue for the Court  
6 on the sanctions issue, which I think  
7 they've basically withdrawn, by the way,  
8 from what I heard, is not who is right or  
9 wrong. It's just did we commit sanctionable  
34:41AM 10 conduct.

11 And, Your Honor, I would just -- two  
12 facts are all you need to know about this.  
13 We sought immediate interpretation from  
14 Judge Meslow. Judge Meslow sent us to Judge  
34:53AM 15 O'Fallon. We sought immediate  
16 interpretation from Judge O'Fallon. Judge  
17 O'Fallon asked us to file motions on it.

18 Going to -- going till the age of  
19 sanctionable conduct do not seek guidance  
35:01AM 20 before they break the law, I would say. So  
21 I would say that sanctions is effectively --  
22 should be not an issue here. We had a  
23 good-faith disagreement about the  
24 interpretation of an order, and we tried to  
35:16AM 25 work it out the best we could.



1 So, Your Honor, with that, I will -- I  
2 will stop. Ms. Moss will handle the Motion  
3 to Compel part of the sanctions motion as  
4 well as the Motion to Compel Discovery as  
35:28AM 5 well as the Motion to Enforce the Protective  
6 Order.

7 Does the Court have any questions for  
8 me?

9 THE COURT: I don't. Ms. Moss?

35:36AM 10 MS. MOSS: Thank you, Your Honor.

11 With regard to the Motion to Compel, I  
12 think it would be really helpful just to  
13 quickly recap where we've been in discovery  
14 and how we got to this point with the 16  
35:49AM 15 requests that are currently at issue.

16 We, CenturyLink, have produced more  
17 than 85,000 pages of documents to the State.  
18 That doesn't even include the native type of  
19 files that are not susceptible to a page  
36:02AM 20 count, things like Excel spreadsheets and  
21 text files that include more than nine  
22 million rows of data about billing and  
23 consumer information.

24 And as Mr. Lobel explained, there's  
36:14AM 25 been over 100 hours of deposition testimony,

1 and that has been captured for the State in  
2 more than 5,000 pages of transcripts. We  
3 have responded, and I have been personally  
4 involved in handling all of these discovery  
36:28AM5 matters, but we've responded to 199 document  
6 requests from the State and 32  
7 interrogatories. We've made 39 separate  
8 document productions to the State.

9 We have done a lot in this case to be  
36:44AM10 responsive to clarify the types of requests  
11 we would get from the State. If we look at  
12 some of the requests that aren't at issue,  
13 they were so broad. Some of them would say  
14 every document with the word "billing" in  
37:01AM15 them, every document in a certain person's  
16 custody and control. So there was a lot of  
17 negotiation about what exactly the State was  
18 seeking and what was reasonable to produce.

19 So, Your Honor, I do also need to  
37:16AM20 address one request the State made about  
21 call recording. During the CID process,  
22 there were requests for call recordings, but  
23 what the Court may not know is that  
24 CenturyLink used different vendors for their  
37:26AM25 call recordings. In order to get some of

1 that information from the vendors,  
2 CenturyLink needed to go to the vendors, and  
3 they explained that to the State, but the  
4 State didn't want to wait for the results  
37:37AM 5 from the vendors and chose to subpoena the  
6 vendors directly.

7 That resulted in the State obtaining  
8 the 91,000 call recordings that we would  
9 have gladly provided given the time to just  
37:53AM 10 gather it ourselves. But the bottom line  
11 is, the State has the data, and that's sort  
12 of the underlying theme to all of these  
13 requests. The State has the data. At  
14 times, they choose not to accept they have  
38:05AM 15 the data or they don't want to believe we've  
16 given it to them. But with many of these  
17 requests, they already have it.

18 I think it would be helpful for the  
19 Court to step through the 16 requests at  
38:18AM 20 issue in a methodical fashion, and if the  
21 Court would allow it, I have just a short  
22 chart to go through those --

23 THE COURT: Listen, you can spent your  
24 time how you want, but I'm saving at least 5  
38:32AM 25 minutes for a rebuttal, so you've got

1 15-minutes --

2 MS. MOSS: Of course, Your Honor.

3 THE COURT: -- to argue your breadth.

4 MS. MOSS: Thank you. And, Your Honor,  
38:38AM 5 I will not go through each request, but just  
6 in case, we've grouped them into three  
7 categories; and so for those categories, if  
8 it would be helpful, I can produce it, or I  
9 can just explain it.

38:48AM 10 THE COURT: You can. If you want to  
11 give it to me, that's fine. Have they seen  
12 it?

13 MS. MOSS: I can give it to them, Your  
14 Honor.

39:04AM 15 THE COURT: Thank you.

16 MS. MOSS: Your Honor, originally, the  
17 State moved on 16 requests. In the State's  
18 reply brief, they disposed of one of the  
19 requests and said they agree we provided the  
39:27AM 20 information at issue. It's Document Request  
21 176. So we have effectively not included  
22 that in this chart as it's no longer at  
23 issue. So you'll see 15 requests here that  
24 we grouped into three separate categories.  
39:42AM 25 We think it's just an easy way for the Court

1 to understand our argument of why we believe  
2 these 15 requests shouldn't be further  
3 compelled.

4 In the first category of the  
39:54AM 5 information already provided, there are four  
6 requests at issue where CenturyLink has  
7 already given the information to the State  
8 that they have requested.

9 Second, there are five requests where  
10:08AM 10 the information just simply does not exist.  
11 A lot of this stems from the State's  
12 misunderstanding of the information that  
13 they're requesting. As you heard  
14 Mr. Baldwin explain, they would hear phrases  
10:21AM 15 or words during the deposition or pulled  
16 from a document, and so in these categories,  
17 the information that they're requesting just  
18 simply is not there.

19 In the last category, Your Honor, there  
10:35AM 20 are six document requests that would be  
21 effectively impossible to produce. There  
22 are things that involve reconstructing data  
23 from 2014, looking at types of data that  
24 would be -- would have to be generated  
10:52AM 25 through a very difficult process to

1 reconstruct data pulled from tables that  
2 exist in databases.

3 But the bottom line, Your Honor, is  
4 that the State said in their reply papers  
11:06AM 5 that for these requests, they're not  
6 actually seeking the data, which is how we  
7 understood the request, that they're seeking  
8 the methodology. They've deposed several  
9 people from CenturyLink who have explained  
11:17AM 10 the way that numbers are obtained from  
11 databases. It's several deponents, and  
12 we've included this in our briefing with the  
13 transcript cites, have explained the  
14 methodology as to how you compile the data,  
11:32AM 15 pull the data from the database. You look  
16 at the data and compare it to data at a  
17 later date.

18 And so there are no documents that  
19 explain that data. There are processes to  
11:42AM 20 write computer code to pull things, but the  
21 documents don't exist, and to reconstruct  
22 the data to explain to the State what  
23 exactly was happening five -- you know, four  
24 to five years ago just simply would be  
11:58AM 25 impossible.

1 And so, Your Honor, I will not step  
2 through each specific request at issue, but  
3 our primary arguments here are that we've  
4 been extremely diligent, responsive to the  
12:13AM 5 State. We've provided the information they  
6 requested, and for the information that we  
7 haven't, it either doesn't exist or it would  
8 be impossible to do.

9 THE COURT: Well, I just -- I didn't  
12:23AM 10 hear Mr. Baldwin say that he already had  
11 175. I think he specifically said he didn't  
12 have 175; is that right?

13 MR. BALDWIN: We have partial data  
14 responsive to that request. There are  
12:37AM 15 customers that Mr. Hall identified as being  
16 defrauded, and we don't have their data.  
17 And we also don't have the legend or code  
18 used to interpret the data which is covered  
19 both by Document Request 175 and Document  
12:47AM 20 Request 111, which I don't believe is on  
21 this chart which we also requested.

22 THE COURT: Do you want to respond to  
23 that?

24 MS. MOSS: Yes, Your Honor. We've had  
12:58AM 25 several discussions. And when I say, "we,"

1 me and Mr. Baldwin have discussed this  
2 verbally and in writing in letters. We have  
3 produced the data that was used in  
4 conjunction with the David Hall analysis.  
13:12AM 5 The State does not believe that we have done  
6 that.

7 As I stand here before you today, I  
8 really don't know how to resolve that other  
9 than to just simply tell the Court we have  
13:25AM 10 provided the data to the State. They have  
11 all of the data related to Minnesota  
12 consumers that was used in the Hall  
13 analysis. They have documents that explain  
14 every code, every bill code, every  
13:39AM 15 adjustment code. We provided those to the  
16 State. They wanted to know how to interpret  
17 the data because they didn't depose  
18 Mr. Hall.

19 And so we actually went out of our way  
20 to create a glossary for them. We called it  
21 a data dictionary or a glossary, and we  
22 personally put together a glossary for the  
23 State with every acronym and header of the  
24 information so that the State would  
14:04AM 25 understand what data -- how it was organized



1 and what it was providing.

2 The nine million rows of data that I'm  
3 referring to, that's the Hall data, Your  
4 Honor. We've provided it to them. We have  
14:18AM 5 the Bates numbers. The State thinks there  
6 was data missing because they misunderstand  
7 the process that it takes to extract the  
8 data and provide it to the State in a format  
9 that relates to Minnesota consumers. But  
14:33AM 10 it's all there. There is not one piece of  
11 data that they don't have with regard to the  
12 Hall analysis.

13 THE COURT: Okay. Do you want to  
14 respond?

14:59AM 15 MR. BALDWIN: I would, Your Honor. We  
16 want to get this case moving. We want to  
17 get to trial. We want to get to summary  
18 judgment. We're tired of the feet dragging.  
19 We just need to get a little bit of  
15:10AM 20 information to get ready for our Motion for  
21 Partial Summary Judgment. It's basically  
22 drafted and would be ready to file shortly  
23 and tying off a few loose ends from  
24 discovery. I'm not going to go through a  
15:20AM 25 lengthy history of every, you know, twist

1 and turn in this litigation.

2 But look. We need to depose David  
3 Hall. We weren't going to depose him  
4 without his data. He didn't produce his  
15:29AM 5 data until two months after the close of  
6 discovery, and they still haven't produced  
7 all of it. We weren't going to waste the  
8 time trying to depose him without the  
9 information he analyzed. He's going to be  
10 probably the first witness we call at trial.  
11 I know he's CenturyLink's expert. If we  
12 don't depose him, it's just going to make an  
13 additional mess at trial. We have to depose  
14 him. There's really no way around it.

15:51AM 15 This issue about the 66 people in the  
16 Complaint, again, these are people we  
17 identified to CenturyLink years ago. We  
18 voluntarily produced 134,000 documents to  
19 CenturyLink showing the complaints from  
16:05AM 20 about 5,000 people who have complained to  
21 our office about CenturyLink's fraudulent  
22 conduct. We haven't hidden these people at  
23 all.

24 To the extent that CenturyLink is going  
16:15AM 25 to use the depositions of these people as

1 pretext to slow down this litigation,  
2 honestly, we'll just strike them from our  
3 Proposed Complaint. We want to get this  
4 moving. We want to get to the consideration  
16:25AM 5 of liability as quickly as possible.

6 I would just like to also briefly  
7 mention that the information that Ms. Moss  
8 provided about the discovery requests, there  
9 are a number of them grouped here;  
16:40AM 10 responsive information does not exist, 184,  
11 185, 198, and 199. I'll notice too, they're  
12 -- the one above that, 197.

13 I would ask that you look at the --  
14 what is called Baldwin Affidavit. Number 3,  
16:58AM 15 Exhibit S, Exhibit T, Exhibit U, Exhibit V,  
16 Exhibit W; these are the documents that  
17 describe a specific number of defrauded  
18 consumers in each of these document requests  
19 or the specific percentage of consumers who  
17:11AM 20 did not get what CenturyLink promised.

21 The idea that these documents don't  
22 exist, it's not in their brief. It's  
23 nothing they filed to support with any  
24 company declaration something in an exhibit  
17:23AM 25 here today that's, you know, been put forth

1 for the first time. This is a company that  
2 audits and monitors and tracks almost  
3 everything.

4 Again, I can't tell you the specific  
17:35AM 5 number of these people that were defrauded  
6 in these ways because CenturyLink has  
7 maintained that it's confidential  
8 information, but it is down to the specific  
9 number of people or the specific percentage.

17:43AM 10 It was obviously some kind of precise  
11 analysis which we haven't been afforded, and  
12 we should because it gets to the issue of  
13 whether or not CenturyLink is even  
14 monitoring its fraudulent practices, how it  
15 quantifies the number of people it's  
16 defrauded. So I would just ask the Court to  
17 look at those few exhibits.

18 The main thing we're trying to get here  
19 today, like I said, is documents to get  
18:05AM 20 ready to prove the full scope of  
21 CenturyLink's fraud at trial. That's  
22 Document Request 175 and then the five that  
23 I mentioned as well as the -- what we've  
24 been calling the state X methodology where  
18:17AM 25 the expansive methodology that CenturyLink

1 provided to another state attorney general.  
2 This is a case about systemic fraud at the  
3 third largest telecommunications company in  
4 the country. It has admitted to tens of  
18:30AM 5 thousands of violations. The company's own  
6 board of directors conducted audits of  
7 millions of documents that track the State's  
8 allegations.

9 We're ready to go, but we think we  
18:40AM 10 should be given a few additional pieces of  
11 information and a few more depositions, and we'll  
12 be trying this. But our big concern today  
13 is getting ready for the consideration of  
14 the merits here because we're ready to go.  
18:50AM 15 The fact that CenturyLink manufactured a  
16 six-month delay in the consideration of this  
17 motion, we've used that time to draft our  
18 Motion for Partial Summary Judgment, and  
19 we're ready to go. So with that, I would  
19:00AM 20 just say, again, we just want a limited  
21 amount of information about quantifying the  
22 scope and scale of CenturyLink's tremendous  
23 fraud.

24 THE COURT: All right. Let's turn to  
19:12AM 25 the Motion to Enforce the Protective Order.

1 MS. MOSS: Your Honor, before I address  
2 that, could I address one statement about  
3 the state X methodology that Mr. Baldwin  
4 mentioned?

19:24AM 5 THE COURT: You may.

6 MS. MOSS: With that point, Your Honor,  
7 this goes towards the State's Motion for  
8 Sanctions where we've been discussing the  
9 clarification of Judge Meslow's order and  
10 what he meant by what's consistent with  
11 methodologies provided to another state. We  
12 need to clarify for the Court that there is  
13 a methodology that has been applied by an  
14 expert witness in this case.

19:31AM 10  
15 What the State wants us to do is  
16 reconstruct assumptions that were made three  
17 years ago. Three years ago before we have  
18 the information we know today, we had  
19 information that was provided to another  
19:59AM 20 state that had nothing to do with Minnesota  
21 or nothing to do with Minnesota consumers.  
22 We, then, as things evolved, retained an  
23 expert to conduct analysis.

24 The State wants us to take something  
25 that we did in 2016, unlearn everything that  
30:12AM

1 we know today and try to recreate something  
2 that CenturyLink did prior to an expert  
3 being retained in the case. The information  
4 doesn't exist for Minnesota. It has never  
50:29AM 5 been conducted. It has never been created.  
6 There's nothing to produce in terms of what  
7 the State labels our methodology, but it  
8 does include information that we knew at the  
9 time in 2016.

10 That response was provided to another  
11 state in good faith to try to resolve  
12 pre-litigation inquiries, and it was  
13 withdrawn. It was specifically withdrawn  
14 from any -- any interrogatory response that  
50:42AM 15 it had previously been provided in and state  
50:59AM 16 X accepted that. It's not an issue in the  
17 other state. It's not an issue here, but it  
18 does exist because the state's share  
19 information. So what the State saw is an  
51:15AM 20 earlier withdrawn answer to an interrogatory  
21 that CenturyLink's expert then said was  
22 inaccurate and based on assumptions that our  
23 expert did not apply.

24 So, Your Honor, it would be extremely  
51:32AM 25 difficult to recreate this information, if

1 not impossible. Given the fact that we know  
2 what we know today, we can't unlearn  
3 information and try to recreate an incorrect  
4 answer. Essentially, what our answer would  
5 be is, State, here is what we think we did  
6 in 2016. We don't stand by this response.  
7 We think it's inaccurate and withdrawn, but  
8 the State is asking us to provide a verified  
9 and sworn interrogatory response swearing  
10 that it's true.

11 So just from a practical perspective  
12 and under the Rules of Civil Procedure, we  
13 don't even understand how that's what Judge  
14 Meslow could have possibly intended by the  
15 words "consistent with" -- or by the phrase  
16 "consistent with methodologies provided to  
17 another state."

18 There are two methodologies at issue,  
19 Your Honor. There was a methodology we --  
20 we provided to a response to what's called  
21 the internet cost recovery fee, methodology  
22 one. Methodology two is the response we  
23 provided with regard to these billing  
24 concerns. So those were the two  
25 methodologies we believe were at issue.



1 We provided that information consistent  
2 with what we provided to another state and  
3 that -- that's really the point of  
4 contention, Your Honor, with what we  
5 provided. Have we provided withdrawn and  
6 superceded responses to the state? We  
7 haven't, but we -- our position is that  
8 can't possibly be what -- what Judge  
9 Meslow's order contemplated.

10 THE COURT: Okay.

11 MS. MOSS: And then, Your Honor,  
12 quickly with the Motion to Enforce the  
13 Protective Order, I just would like to  
14 clarify that we're trying to seek to keep a  
15 miniscule portion of the State's  
16 non-dispositive papers filed in redacted  
17 form. As those materials currently stand,  
18 they are in the record in redacted form, but  
19 what the State wants to do is re-file them  
20 unredacted.

21 There are only 11 categories of  
22 information at issue which we've grouped and  
23 explained in our brief successively at pages  
24 11 through 19. And what those 11 categories  
25 have to do with is primarily numerical

1 figures. These numerical figures are quoted  
2 from documents that CenturyLink provided  
3 during discovery and that, as I said, are  
4 currently in redacted form.

54:02AM 5 And what the State want -- what the  
6 State has not done is they -- they want to  
7 interpret the Protective Order to mean that  
8 they can release this information if they  
9 just generally refer to it. But under the  
54:22AM 10 Protective Order, we have the right to  
11 designate information as confidential if it  
12 is commercial information within the meaning  
13 of Rule 26.03.

14 And under Rule 26.03, we've provided  
54:40AM 15 several cases that explain that the  
16 definition of confidential commercial  
17 information is different than a standard for  
18 trade secrets because under Rule 26.03, we  
19 can protect either trade secrets or other  
54:53AM 20 commercial information which is exactly what  
21 we've done here. So we've taken -- we've  
22 designated our documents during the  
23 discovery process as confidential.

24 The State is now quoting from those  
55:06AM 25 documents adding language to advocate in

1 non-dispositive papers that that information  
2 stands for something that it doesn't,  
3 effectively taking the information out of  
4 context. But they want to un-redact the  
5 confidential numbers, words, and phrases  
6 they quoted from discovery materials.

7 We've explained in our briefing that  
8 there are cases, including the  
9 GlaxoSmithKline case and the Star and  
10 Tribune case that recognize that the matter  
11 of the proceedings -- the stage of the  
12 proceedings matters. And here, because  
13 these are non-dispositive motions, there is  
14 no public right of access. The public  
15 simply does not have a right to access  
16 non-dispositive materials, and there is no  
17 reason for the Court to even engage in that  
18 inquiry because this is all related --  
19 unrelated to the merits.

20 We're not asking the Court, at this  
21 point, to rule on what would be admissible  
22 at trial, and we're not asking the Court to  
23 decide what would be maintained as  
24 confidential information at trial. So this  
25 motion is extremely limited, Your Honor.

1 It's limited to those non-dispositive  
2 papers. It's limited to 11 categories of  
3 information that are at issue, and we're  
4 simply seeking to keep that information  
5 redacted in the non-dispositive materials  
6 that have been filed.

7 THE COURT: Okay. Thank you. And a  
8 response?

9 MR. CANADAY: Good morning, again, Your  
10 Honor. James Canaday. I'll be brief.  
11 Primarily, we will rely on our written  
12 response on this issue, but I just want to  
13 highlight a couple of things.

14 Ms. Moss said, and we can agree, that  
15 you can reduce this down to 10 -- excuse me  
16 -- 11 categories of redactions. But, in  
17 fact, you can simplify it one further level  
18 because 9 of those 11 are simply numbers.  
19 And when Ms. Moss was speaking, she said  
20 they're just numerical figures and that  
21 makes this sound unimportant and makes it  
22 seem like it's easy to just redact them to  
23 solve this problem, but these numerical  
24 figures are the heart of the State's case.  
25 And so there is a disconnect. They're

1 depending on how this issue is argued or in  
2 the briefing as to how important this issue  
3 is.

4 We did spend months, and this connects  
5 everything you've heard in the last hour.  
6 What's been going on over these months? The  
7 State has been trying to resolve this  
8 redaction issue, which is very complicated  
9 for a million reasons, since last September.  
10 I could say since last July depending on how  
11 you count. That's when all this started.

12 And we're down to 11 disagreements.  
13 That doesn't show you everything that we  
14 have come to an agreement on. I would  
15 suggest the Court look at the redacted  
16 version of the filing. If the Court's  
17 practice is like probably everybody at this  
18 table, most of us are looking at unredacted  
19 filings, for obvious reasons.

20 If you look at the redacted filings,  
21 you'll see that there is a lot of  
22 information that we agreed, because we can  
23 in good faith, is trade secrets and it's  
24 something appropriate to protect.

25 We are not refusing to acknowledge that

1 CenturyLink has that type of information,  
2 but the State is a public entity, and we do  
3 have an obligation not to redact information  
4 for which there is no basis for it to be  
5 redacted. And I would suggest that's  
6 actually equally true of the Court.

7 So we -- especially for the first nine  
8 categories of information where it's the  
9 numbers, I would just add that it's  
10 important for this to be resolved from the  
11 State's point of view, and at this point,  
12 because these are at the heart of the  
13 State's case, this issue is going to repeat  
14 and anything else that happens in this case.  
15 So some direction from the Court as to this  
16 issue would be helpful in that corner -- in  
17 that regard as well.

18 The comments by Ms. Moss about the  
19 stage of the proceeding matters and because  
20 this is a non-dispositive context, it's  
21 appropriate to redact them; that's not what  
22 the cases that are cited in here say. As we  
23 laid out in our briefing, those cases  
24 repeatedly point to two words that are the  
25 standard: Something is tangential or

1 unrelated to the issue, which often happens  
2 when you're at the pre-merits phase. That's  
3 where there's wider latitude for the Court  
4 to redact information from the public view.  
5 And that's why it's important that we're  
6 pointing out here that these issues that the  
7 State has refused to go along with  
8 redacting, these are not tangential. These  
9 are not unrelated to the issues. These are  
10 the core of the allegations made by the  
11 State in the Amended Complaint and the  
12 motions that are at issue here.

13 Just the last thing I'll say, and I  
14 won't go into any detail, I think, in my  
15 view, it's constructive to look at both the  
16 affidavit submitted by CenturyLink and the  
17 cases submitted by CenturyLink. I'm asking  
18 you to look at everything they're giving you  
19 in support of their motion. I'm doing that  
20 because what the affidavits show doesn't  
21 line up with what the cases require. The  
22 affidavits, although in the briefing they're  
23 described as, you know, the affidavit of so  
24 and so provides information about the  
25 commercially-sensitive nature of this -- of,

1 you know, the information we're talking  
2 about, the affidavits themselves, by and  
3 large, show why CenturyLink is concerned  
4 that it will hurt their consumer base if  
00:31AM 5 this information is out there. There will  
6 be negative marketing about CenturyLink's  
7 services if its consumers know what the  
8 State is alleging in terms of the consumer  
9 fraud allegations in this case.

00:42AM 10 Trade secret jurisprudence doesn't  
11 protect that. That's a consequence of being  
12 sued by a State with allegations of consumer  
13 fraud. You will not find good support in  
14 CenturyLink's submissions related to  
00:57AM 15 competitor use of information.

16 And so that last piece that I also said  
17 I would encourage you to look at is the  
18 cases CenturyLink has submitted. Most of  
19 them are submitted attached to the affidavit  
01:11AM 20 of CenturyLink's attorney, Mr. Winkler.  
21 Most of them are unpublished. Many of them  
22 are from out of state. But if you go  
23 through them, in virtually every one, you're  
24 going to find a description of why the party  
01:23AM 25 was alleging something was important to be



1 treated as a trade secret. It was training  
2 material that had been developed over a  
3 number of years. It was confidential  
4 financial information that went to the core  
5 of the company. It was confidential  
6 research that was the heart of the typical  
7 trade secret example.

8 And then look at CenturyLink's chart in  
9 its motion of the 11 categories we're  
10 talking here. Again, nine of them are  
11 simply the number that the State has found  
12 through discovery as to what the allegations  
13 are, and two of them describe the systems  
14 used by CenturyLink to remove discounts from  
15 consumers.

16 I'll leave it at that. Thank you.

17 THE COURT: A response, Ms. Moss?

18 MS. MOSS: Your Honor, I'll make two  
19 quick points. First, the State is referring  
20 to the wrong standard. The standard here is  
21 under Rule 26.03, and it's a good-cause  
22 standard. We have shown that there is good  
23 cause to protect these 11 categories of  
24 information through five unrebutted  
25 declarations. These are declarations from

1 company personnel to explain the  
2 confidential nature of the commercial  
3 information, and they've explained the harm  
4 that can result.

12:29AM 5 Now, this -- Mr. Canaday mentioned  
6 trade secrets. That's not the standard  
7 here. In the case we've submitted at pages  
8 9 -- at page 9 of our brief, they have  
9 nothing to do with trade secrets. They're  
12:42AM 10 all confidential commercial information  
11 under Rule 26.03.

12 And in those cases, especially the  
13 *Krueger case, Krueger versus Ameriprise*  
14 *Financial*, that case specifically looked at  
12:57AM 15 commercial information related to internal  
16 assessments and third-party analysis by a  
17 financial consultant. It's exactly what the  
18 nine numbers at issue in this case has to do  
19 with. The information has to do with --  
13:11AM 20 that we're seeking be redacted. It has to  
21 do with internal assessments that the  
22 company has run. It has to do with internal  
23 assessments that then were released by a  
24 third-party financial consultant but  
13:23AM 25 understand a designation of confidentiality.

1 And so the *Krueger* case specifically  
2 held that that information was commercial  
3 information supported by declarations of  
4 company personnel, and it was protected in  
5 redacted form because it was submitted in  
6 connection with a non-dispositive motion.

7 Secondly, Your Honor, the numbers are  
8 not just numbers. These are assessments.  
9 These are internal assessments that the  
10 company has done. The five declarations  
11 address the significance of this information  
12 and identifies specific harm that can  
13 result, that negative advertising campaigns  
14 are common in the industry, that information  
15 taken out of context as the State presented  
16 it but then connects it with a discovery  
17 document and quotes from an internal  
18 discovery document and asserts that that  
19 information is true, the company personnel  
20 explained how prejudicial that is to the  
21 competitive nature of the sales industry.

22 They also talk about the harm that  
23 would result from the loss of customers. As  
24 Mr. Canaday tried to explain, this isn't a  
25 harm to the customer. This a harm to

1 CenturyLink's business by releasing internal  
2 assessments and analysis that leads to the  
3 loss of customers. That is competitive  
4 harm. That is business harm. And that's  
04:51AM 5 exactly what Rule 26.03 contemplates.

6 And for those reasons, Your Honor, we  
7 ask that the Court simply redact this  
8 material, keep it in redacted form, and save  
9 for another day the discussion about what  
05:03AM 10 will be core to the State's case at trial.

11 THE COURT: Okay. I understand the  
12 issues. Anything else?

13 MR. BALDWIN: No, Your Honor.

14 THE COURT: I'll take the matter under  
05:15AM 15 advisement and issue my order. Thank you,  
16 all.

17 MR. BALDWIN: Thank you.

18 MS. MOSS: Thank you.

19 (The foregoing proceeding concluded at  
20 11:05 a.m.)  
21  
22  
23  
24  
25

April 10, 2019

State of Minnesota v. CenturyLink

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1 STATE OF MINNESOTA )  
2 ) ss  
3 COUNTY OF ANOKA )

4 BE IT KNOWN THAT I, Christina M. De Grande,  
5 the undersigned, an official court reporter for the  
6 Tenth Judicial District, in and for the County of  
7 Anoka, State of Minnesota, do hereby certify that  
8 the foregoing 83 pages are a true and accurate copy  
9 of my original stenotype notes taken relative to the  
10 aforementioned matter on April 10, 2019, in the City  
11 of Anoka, County of Anoka, and State of Minnesota,  
12 before the Honorable Bethany Fountain Lindberg.  
13  
14

15 WITNESS MY HAND AND SEAL this 22nd day of  
16 April, 2019.  
17

18 Christina DeGrande

Digitally signed by Christina DeGrande  
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email=christinadegrande@yahoo.com, c=US  
Date: 2019.04.23 12:18:25 -05'00'

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